Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	ET Docket No. 04-37
Broadband Powerline Systems	)	ET Docket No. 03-104
	)	FCC 04-245

Petition for Reconsideration
Cohen, Dippell and Everist, P.C.

The following Petition for Reconsideration is submitted on behalf of Cohen, Dippell and Everist, P.C. ("CDE"). CDE or its predecessors located in Washington, D.C. have been providing consulting engineering services to the communications industry for over 60 years.

The Federal Communications Commission ("Commission") in the Report and Order has adopted new requirements and measurement guidelines for a new type of carrier current system. CDE applauds the Federal Communications Commission ("Commission") for exploring avenues which bring forward new opportunities and services to the general public. As stated as an objective by the Report and Order, the Commission is striving to provide a mechanism whereby alternate forms of broadband access communication may be technically feasible. This alternate form of broadband access communication would be to utilize existing power line system infrastructure.

The Commission goals are laudable. However, the Commission if it does not insist upon proper execution will relegate by this action the first step of diminishing the capacity of receiving off-the-air signals to the general public.

This Petition is directed to this aspect.

Basically, the broadband power line systems operations would not be permitted in certain exclusion zones.

The FCC authorized broadband power line access in the band from 1.705 MHz to 80 MHz would be permitted under certain conditions:

- For access broadband over power line ("Access BPL")
- For in-house broadband over power lines ("In-House BPL")

By virtue of the above exclusion, the Commission acknowledges that the potential for interference does exist – see Paragraph 38 of the FCC Report and Order. The Commission states, "In fact, in most cases the level of emissions from Access BPL will be at or close to the noise floor at distances beyond a hundred meters of an installed power line." The question is, how many receivers in use today are located with 328 feet of installed power line? Is the average consumer capable of identifying the source of the interference? For years, states required before high power transmission system could be commissioned to make before and after measurements. The effect of weather on power line noise is well documented. The Commission in its effort to establish a new service has not indicated how measurements of system performance in areas where weather is a factor are to be treated. In the Public Notice (DA 04-1844) dated June 24, 2004,[1] the FCC responded to questions regarding the use of unlicensed devices. The Commission provided the following guidance:

> "Under the Communications Act of 1934, as amended, the FCC holds exclusive jurisdiction over the regulation and resolution of RFI issues.[2] Section 301 declares that one of the purposes of the Act is to "maintain the control of the United States over all channels of radio transmission," and Section 303(f) obligates the Commission to make regulations necessary to "prevent interference."[3] In addition, Section 302 has granted the Commission express authority to adopt regulations

[1]Commission Staff Clarifies FCC's Role Regarding Radio Interference Matters and its Rules Governing Customer Antennas and Other Unlicensed Equipment.

[2]Communications Act of 1934, 47 U.S.C. Section 1 et. seq. (all citations to the U.S. Code) (Act).

[3]47 U.S.C. Sections 301, 303(f) (2004).

"governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation... in sufficient degree to cause harmful interference to radio communications."[4] As the Conference Report to the 1982 Amendments to the Act stated, the Act reserves "exclusive jurisdiction to the Federal Communications Commission over matters involving RFI [and provides] that regulation of RFI phenomena shall be imposed only by the Commission."[5] Both the FCC and the federal courts have overturned attempts by third parties to regulate RFI matters in light of the FCC's exclusive authority in this area.[6]

The statute has always contemplated FCC authority over not only RFI issues raised by the operation of FCC licensees, such as radio broadcast stations, but also RFI issues arising from the operation of unlicensed devices. As the Senate Report to the 1968 Amendments to the Act stated, "[t]he Federal Communications Commission presently has authority under Section 301 of the Communications Act to prohibit the use of equipment or apparatus which causes interference to radio communications and, under 303(f) to prescribe regulations to prevent interference between stations. Pursuant to this authority the Commission has established technical standards applicable to the use of various radiation devices."[7] As one example of RFI involving unlicensed devices, the Report cited interference caused to air-safety-related emergency communications and other frequencies at a California facility by 58 garage door openers, which were then, as well as now, RF devices subject to technical standards set out in Part 15 of our rules.[8] Today, in addition to the unlicensed devices discussed in the legislative history, such as radios, tape recorders, remote control devices, and garage door openers, a great diversity of RF technologies operate on an unlicensed basis under Part 15."

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[4]47 U.S.C. Sections 302a(a)(1) (2004).

[5]See H.R. Report No. 765, 97th Cong., 2d Sess. 33 (1982), 1982 U.S.C.C.A.N. 2261, 2277 (1982 Conference Report).

[6]See generally Freeman v. Burlington Broadcasters Inc., 204 F.3d 311, 319-22 (2nd Cir. 2000); Southwestern Bell Wireless Inc. v. Johnson County Board of County Commissioners, 199 F.3d 1185, 1189-93 (10th Cir 1999); see also In the Matter of 960 Radio, Inc., Memorandum Opinion and Declaratory Ruling, FCC 85-578, 1985 WL 193883 (Nov. 4, 1985) ("960 Radio"); In re Petition of Cingular Wireless L.L.C. for a Declaratory Ruling, Memorandum Opinion and Order, 18 F.C.C.R. 13126, DA 03-2196 (rel. July 7, 2003)("Anne Arundel"); In re Mobilecomm of New York Inc., Memorandum Opinion and Declaratory Ruling, 2 FCC Rcd 5519 (CCB 1987) ("Mobilecomm").

[7]See S. Rep. No. 1276, 90th Cong., 2d Sess. 1968, 1968 U.S.C.C.A.N. 2486, 2487 (1968 Senate Report); see generally 47 C.F.R Sections 2.901, 2.1033, 15.5 et seq (defining the FCC's equipment certification and RFI requirements)

[8]See 1968 Senate Report at 2488.

The Commission's rules, for example, recognize the inherent inability of prediction methodology in determining precisely the presence or absence of service and interference. It appears that the adopted methodologies are premised on the basis of normal dry weather environment.

This firm is very familiar with instances where the public is not aware of the reason that their reception is being suddenly impaired by a new device operating in the area. In the majority of cases, the consumer does not seek corrective action and the service if the interference is sufficiently prolonged is lost without a record that it was provided.

Paragraph 59 outlines if corrective measures are warranted. The Commission states that if required, the Enforcement Bureau with the assistance of the Engineering and Technology will review the complaint and take corrective action. The steps outlined in the Report and Order do not necessarily include the public as partner in the process. The Commission set forth a process for resolving interference complaints that may be long and arduous and these need to be re-examined, if the objectives are to be realized.

Respectfully submitted,

Donald G. Everist, P.E.

February 7, 2005